

US DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL NO. 05-11594 RCL

GERALDINE FAVALORO, for herself and on
behalf of all others similarly situated,

Plaintiff,

vs.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE, BAYVIEW CREMATORY, LLC,
a New Hampshire Limited Liability Company,
LINDA STOKES, TRUSTEE OF THE DEKES
REALTY TRUST OF 107 SOUTH BROADWAY,
LAWRENCE, MASSACHUSETTS, and JOHN J.
GENTILE,

Defendants.

DEFENDANT BAYVIEW CREMATORY LLC.'S
OBJECTION TO PLAINTIFF'S MOTION FOR VOLUNTARY
DISMISSAL WITHOUT PREJUDICE

Defendant Bayview Crematory LLC. ("Bayview") objects to Plaintiff's Motion For Voluntary Dismissal Without Prejudice. If plaintiff wishes to dismiss her case against Bayview, the dismissal should be with prejudice.

In support of this Objection, Bayview states as follows:

1. Plaintiff argues that the dismissal should be without prejudice because (a) plaintiff may become a member of a class in purported class actions pending in this court (See, Hunt v. Bayview Crematory LLC. et. al., No. 05-11140-RCL and Andersen et. al. v. Bayview Crematory LLC. et. al., No. 05-11904-RCL) and (b) plaintiff may become a

member of a class in a Massachusetts state court proceeding. (See, Anzalone v. Bayview Crematory LLC. et. al., Essex County Superior Court No. 05-00789).

2. To the extent that plaintiff wishes to preserve her right to participate in the purported class actions pending in this court, she should move to join the cases. To the extent that plaintiff wishes to participate in the state court proceeding, she is out of luck because class certification was denied and no interlocutory appeal has been taken.

3. It appears that plaintiff desires a voluntary dismissal without prejudice as an “end run” around this court’s order denying plaintiff’s motion for entry of a separate and final judgment. See, Docket Document 46 and Order of 5/4/06 denying same; and Docket Document 49 and Order of 10/17/06 denying same. Plaintiff sought a separate and final judgment pursuant to F.R.Civ.P. 54(b) for the purpose of filing an appeal from this court’s order granting Harvard’s motion to dismiss. This Court declined to issue a separate and final judgment due to the risk of piecemeal litigation. See, Order of 10/17/06.

4. If plaintiff’s motion for a voluntary dismissal *without prejudice* is granted then plaintiff will be able to *simultaneously* appeal the Harvard ruling and file a new lawsuit against Bayview in any state or federal court with jurisdiction over the parties. If plaintiff’s appeal were meritorious, the same claim could be litigated twice—once in a newly filed action against Bayview and once in this court on remand (presumably with Bayview a third party defendant—see, Gentile’s Objection To Plaintiff’s Motion To Dismiss Without Prejudice, Docket Document 62).

5. To the extent that plaintiff wishes to proceed in a representative capacity, the case is properly in this court and should be resolved under the present docket number.

WHEREFORE, Bayview requests this Court to deny plaintiff's motion for voluntary dismissal without prejudice.

Respectfully Submitted,

/s/ Andrew R. Schulman

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November 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been served on November 3, 2006 on all counsel of record via this Court's ECF facilities.

November 3, 2006

/s/Andrew R. Schulman,
Andrew R. Schulman